

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 814**

---

**Introduced by Assembly Member Krekorian**

February 26, 2009

---

An act to amend Section 12021 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 814, as amended, Krekorian. Firearms: surrender.

Existing law makes it an offense for a person convicted of a felony, who is addicted to narcotics, or, for a period of 10 years, for a person who is convicted of specified misdemeanors, to own, purchase, receive, have in their possession or under their custody or control any firearm, as specified. Existing law provides for a notice to a defendant of these provisions, as specified.

This bill would establish a procedure for ~~defendants~~ *a defendant* who ~~own, have owns, has possession, or custody, or control of firearms a~~ *firearm*, to sell the firearm to a firearms dealer or relinquish the firearm to a law enforcement agency in order to comply with the prohibitions described above. The procedure would in part require the defendant to disclose, ~~under penalty of perjury~~, whether the defendant owns or has possession ~~or~~, custody, or control of any firearms and to list those firearms. The bill would provide procedures for persons in or out of custody to relinquish their firearms, including designating a law enforcement agency or a person as the defendant's *designee*, *and would* require the defendant or the defendant's designee to file a form showing, among other things, the date the firearm was relinquished. Failure to

timely file the form would, subject to exception, be an infraction punishable by a fine not exceeding ~~\$100~~ \$500.

By ~~expanding the scope of the offense of perjury, and~~ creating a new infraction, this bill would impose a state-mandated local program. By imposing additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 12021 of the Penal Code is amended to
- 2 read:
- 3 12021. (a) (1) Any person who has been convicted of a felony
- 4 under the laws of the United States, the State of California, or any
- 5 other state, government, or country or of an offense enumerated
- 6 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
- 7 to the use of any narcotic drug, and who owns, purchases, receives,
- 8 or has in his or her possession or under his or her custody or control
- 9 any firearm is guilty of a felony.
- 10 (2) Any person who has two or more convictions for violating
- 11 paragraph (2) of subdivision (a) of Section 417 and who owns,
- 12 purchases, receives, or has in his or her possession or under his or
- 13 her custody or control any firearm is guilty of a felony.
- 14 (b) Notwithstanding subdivision (a), any person who has been
- 15 convicted of a felony or of an offense enumerated in Section
- 16 12001.6, when that conviction results from certification by the
- 17 juvenile court for prosecution as an adult in an adult court under
- 18 Section 707 of the Welfare and Institutions Code, and who owns
- 19 or has in his or her possession or under his or her custody or control
- 20 any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge who sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

1 (B) Finds that the petitioner is not within a prohibited class as  
2 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,  
3 and the court is not presented with any credible evidence that the  
4 petitioner is a person described in Section 8100 or 8103 of the  
5 Welfare and Institutions Code.

6 (C) (i) Finds that the petitioner does not have a previous  
7 conviction under this subdivision no matter when the prior  
8 conviction occurred.

9 (ii) In making its decision, the court shall consider the  
10 petitioner's continued employment, the interest of justice, any  
11 relevant evidence, and the totality of the circumstances. The court  
12 shall require, as a condition of granting relief from the prohibition  
13 under this section, that the petitioner agree to participate in  
14 counseling as deemed appropriate by the court. Relief from the  
15 prohibition shall not relieve any other person or entity from any  
16 liability that might otherwise be imposed. It is the intent of the  
17 Legislature that courts exercise broad discretion in fashioning  
18 appropriate relief under this paragraph in cases in which relief is  
19 warranted. However, nothing in this paragraph shall be construed  
20 to require courts to grant relief to any particular petitioner. It is  
21 the intent of the Legislature to permit persons who were convicted  
22 of an offense specified in Section 273.5, 273.6, or 646.9 to seek  
23 relief from the prohibition imposed by this subdivision.

24 (3) Any person who is subject to the prohibition imposed by  
25 this subdivision because of a conviction of an offense prior to that  
26 offense being added to paragraph (1) may petition the court only  
27 once for relief from this prohibition. The petition shall be filed  
28 with the court in which the petitioner was sentenced. If possible,  
29 the matter shall be heard before the same judge that sentenced the  
30 petitioner. Upon filing the petition, the clerk of the court shall set  
31 the hearing date and notify the petitioner and the prosecuting  
32 attorney of the date of the hearing. Upon making each of the  
33 following findings, the court may reduce or eliminate the  
34 prohibition, impose conditions on reduction or elimination of the  
35 prohibition, or otherwise grant relief from the prohibition as the  
36 court deems appropriate:

37 (A) Finds by a preponderance of the evidence that the petitioner  
38 is likely to use a firearm in a safe and lawful manner.

39 (B) Finds that the petitioner is not within a prohibited class as  
40 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,

1 and the court is not presented with any credible evidence that the  
2 petitioner is a person described in Section 8100 or 8103 of the  
3 Welfare and Institutions Code.

4 (C) (i) Finds that the petitioner does not have a previous  
5 conviction under this subdivision, no matter when the prior  
6 conviction occurred.

7 (ii) In making its decision, the court may consider the interest  
8 of justice, any relevant evidence, and the totality of the  
9 circumstances. It is the intent of the Legislature that courts exercise  
10 broad discretion in fashioning appropriate relief under this  
11 paragraph in cases in which relief is warranted. However, nothing  
12 in this paragraph shall be construed to require courts to grant relief  
13 to any particular petitioner.

14 (4) Law enforcement officials who enforce the prohibition  
15 specified in this subdivision against a person who has been granted  
16 relief pursuant to paragraph (2) or (3) shall be immune from any  
17 liability for false arrest arising from the enforcement of this  
18 subdivision unless the person has in his or her possession a certified  
19 copy of the court order that granted the person relief from the  
20 prohibition. This immunity from liability shall not relieve any  
21 person or entity from any other liability that might otherwise be  
22 imposed.

23 (d) (1) Any person who, as an express condition of probation,  
24 is prohibited or restricted from owning, possessing, controlling,  
25 receiving, or purchasing a firearm and who owns, purchases,  
26 receives, or has in his or her possession or under his or her custody  
27 or control, any firearm but who is not subject to subdivision (a) or  
28 (c) is guilty of a public offense, which shall be punishable by  
29 imprisonment in a county jail not exceeding one year or in the  
30 state prison, by a fine not exceeding one thousand dollars (\$1,000),  
31 or by both that imprisonment and fine. The court, on forms  
32 provided by the Department of Justice, shall notify the department  
33 of persons subject to this subdivision. The notice shall include a  
34 copy of the order of probation and a copy of any minute order or  
35 abstract reflecting the order and conditions of probation.

36 ~~(2) (A) (i) For any person who is subject to subdivision (a),~~  
37 ~~(b), or (c), the court shall, at the time judgment is imposed, instruct~~  
38 ~~the defendant that he or she is prohibited from owning, purchasing,~~  
39 ~~receiving, possessing, or having under his or her custody or control,~~  
40 ~~any firearm, and that he or she shall relinquish all firearms in the~~

1 manner provided in this section. The court shall provide a notice  
2 and form which shall state the prohibition, the manner in which  
3 firearms may be relinquished, and the penalty imposed for failure  
4 to comply. The form shall require the defendant to declare, under  
5 penalty of perjury, whether or not he or she owned, possessed, or  
6 had in his or her custody any firearms at the time judgment was  
7 imposed, and shall require the defendant to specify, with as much  
8 detail as possible, the make, model, and location of each of the  
9 firearms. The form shall require the defendant to relinquish all  
10 firearms within five days of the earlier of judgment or release from  
11 custody, or within 14 days if he or she is in custody continuously  
12 for that period following judgment, and to state the date that each  
13 firearm was relinquished and the name of the firearms dealer or  
14 law enforcement agency to which it was relinquished. The form  
15 shall inform the defendant that a person who relinquishes any  
16 firearm to a law enforcement agency pursuant to this section  
17 voluntarily abandons all rights and claims to the relinquished  
18 firearm, and shall not be entitled to sell or transfer title of the  
19 firearm to anyone following relinquishment of the firearm to the  
20 law enforcement agency.

21 (ii) The form shall require the defendant to explain in detail the  
22 circumstances surrounding the loss or theft of any firearm that the  
23 defendant previously owned, possessed, or had under his or her  
24 custody or control, the loss or theft of which renders him or her  
25 unable to fully comply with these provisions. The form shall further  
26 require the defendant to explain in detail any action taken to report  
27 the loss or theft to any law enforcement agency or insurance  
28 provider. The arresting law enforcement agency shall forward to  
29 the Department of Justice any form submitted by a defendant which  
30 identifies lost or stolen firearms. The form shall also provide for  
31 the defendant to grant power of attorney over any identified  
32 firearms and name a designee, pursuant to subparagraph (D).  
33 Failure to provide the notice shall not be a defense to a violation  
34 of this section.

35 (B) For any person who is subject to subdivision (a), (b), or (c),  
36 following the imposition of judgment the defendant shall relinquish  
37 any firearm he or she owns, possesses, or has within his or her  
38 custody or control in the manner described in subparagraphs (C)  
39 and (D).

1     ~~(C) (i) For any defendant who is not in custody following the~~  
2 ~~imposition of judgment, the defendant shall dispose of any firearm~~  
3 ~~he or she owns, possesses, or has within his or her custody or~~  
4 ~~control within five days of the imposition of judgment by~~  
5 ~~surrendering the firearm to the control of local law enforcement~~  
6 ~~officials, or by selling the firearm to a licensed firearms dealer.~~

7     ~~(ii) During the five days following the imposition of judgment,~~  
8 ~~the defendant shall not be prosecuted under subdivision (a), (b),~~  
9 ~~or (c) for his or her ownership, custody or control of a firearm, or~~  
10 ~~his or her possession of a firearm either within his or her home or~~  
11 ~~while lawfully transporting the firearm in order to comply with~~  
12 ~~these provisions.~~

13     ~~(iii) Following relinquishment, but within the five days~~  
14 ~~following the imposition of judgment, the defendant shall submit~~  
15 ~~the completed form described in subparagraph (A) to the arresting~~  
16 ~~law enforcement agency.~~

17     ~~(D) (i) For any defendant who is in custody following the~~  
18 ~~imposition of judgment, the defendant shall, using the form~~  
19 ~~described in subparagraph (A), grant power of attorney over any~~  
20 ~~firearm identified pursuant to subparagraph (A) to a designee not~~  
21 ~~otherwise prohibited from possessing firearms under state and~~  
22 ~~federal law. The defendant may name a law enforcement agency~~  
23 ~~as his or her designee.~~

24     ~~(ii) Within 14 days following the imposition of judgment, the~~  
25 ~~designee shall dispose of any firearm by surrendering the firearm~~  
26 ~~to the control of local law enforcement officials, or by selling the~~  
27 ~~firearm to a licensed firearms dealer.~~

28     ~~(iii) During the 14 days following the imposition of judgment,~~  
29 ~~a defendant who is in custody shall not be prosecuted under~~  
30 ~~subdivision (a), (b), or (c) for his or her ownership of a firearm to~~  
31 ~~be relinquished.~~

32     ~~(iv) Following relinquishment, but within the 14 days following~~  
33 ~~the imposition of judgment, the designee shall submit the~~  
34 ~~completed form described in subparagraph (A) to the arresting law~~  
35 ~~enforcement agency.~~

36     ~~(v) If the defendant is released from custody during the 14 days~~  
37 ~~following the imposition of judgment and a designee has not yet~~  
38 ~~taken temporary possession of any firearm to be relinquished as~~  
39 ~~described above, the defendant shall, within five days following~~

1 his or her release, relinquish any firearm in the manner described  
2 in subparagraph (C).

3 (E) Where relinquishment of a firearm threatens a defendant's  
4 constitutional right against self-incrimination, the defendant shall  
5 have use immunity for the act of relinquishment.

6 (F) Failure by a defendant who was not in custody or of a  
7 designee of a defendant who was in custody, except a designee  
8 that is a law enforcement agency, to timely file the completed form  
9 described in subparagraph (A) with the arresting law enforcement  
10 agency shall constitute an infraction punishable by a fine not  
11 exceeding one hundred dollars (\$100).

12 (G) Local law enforcement agencies are urged to sign up with  
13 the Department of Justice to receive updated information from the  
14 Prohibited Armed Persons File, as described in Sections 12010 to  
15 12012, inclusive. Local law enforcement is further encouraged to  
16 review this information against the declarations in the submitted  
17 forms described in subparagraph (A) and to retrieve illegally  
18 possessed firearms whenever possible.

19 (2) (A) For any person who is subject to subdivision (a), (b),  
20 or (c), the defendant shall, following conviction, relinquish all  
21 firearms he or she owns, possesses, or has within his or her custody  
22 or control in the manner described in subparagraphs (C) and (D).  
23 Using the form described in subparagraph (B), the defendant shall  
24 name a designee and grant the designee power of attorney for the  
25 purpose of transferring or disposing of any firearm. The defendant  
26 may name a consenting law enforcement agency as his or her  
27 designee.

28 (B) (i) For any person who is subject to subdivision (a), (b), or  
29 (c), the court shall, upon conviction, instruct the defendant that  
30 he or she is prohibited from owning, purchasing, receiving,  
31 possessing, or having under his or her custody or control any  
32 firearm, and that he or she shall relinquish all firearms through  
33 a designee in the manner provided in this section. The court shall  
34 provide the defendant with a notice and form developed by the  
35 Department of Justice which shall state the prohibition, the manner  
36 in which firearms may be relinquished, and the penalty imposed  
37 for failure to comply. Failure to provide the notice shall not be a  
38 defense to a violation of this section.

39 (ii) The form shall require the defendant to declare whether he  
40 or she owned, possessed, or had in his or her custody any firearms



1 at the time of conviction, and shall require the defendant to  
2 describe the firearms with as much detail as possible.

3 (iii) The form shall authorize the defendant to name a designee  
4 and grant the designee power of attorney for the purpose of  
5 transferring or disposing of any firearms pursuant to subparagraph  
6 (A). The form shall require the designee to declare that he or she  
7 is not prohibited from possessing firearms under state or federal  
8 law. The form shall also require the designee to indicate his or  
9 her consent to the designation and to state the date each firearm  
10 was relinquished and the name of the party to whom it was  
11 relinquished.

12 (iv) The form shall require the defendant to explain in detail  
13 the circumstances surrounding the loss or theft of any firearm the  
14 defendant previously owned, possessed, or had under his or her  
15 custody or control, the loss or theft of which renders him or her  
16 unable to fully comply with these provisions. The form shall further  
17 require the defendant to explain in detail any action taken to report  
18 the loss or theft to any law enforcement agency or insurance  
19 provider. The form shall require the defendant to notify both the  
20 arresting law enforcement agency and the Department of Justice  
21 that he or she no longer owns or possesses the firearm.

22 (C) The following procedures shall apply to any defendant who  
23 is not in custody following conviction:

24 (i) The designee shall dispose of any firearm the defendant  
25 owns, possesses, or has within his or her custody or control within  
26 five days of the conviction by surrendering the firearm to the  
27 control of local law enforcement officials, selling the firearm to a  
28 firearms dealer, or selling or transferring the firearm to a third  
29 party by completing the sale or transfer through a firearms dealer.

30 (ii) During the five-day period following conviction, the  
31 defendant shall not be prosecuted under subdivision (a), (b), or  
32 (c) for his or her ownership, custody or control, or possession of  
33 a firearm within his or her home, provided the firearm was owned  
34 by the defendant prior to conviction. This provision shall not apply  
35 to a defendant who was, prior to conviction, already prohibited  
36 from owning, purchasing, receiving, possessing, or having under  
37 his or her custody or control any firearm by subdivision (a), (b),  
38 or (c).

39 (iii) If the defendant does not own, possess, or have within his  
40 or her custody or control any firearms to relinquish, the defendant

1 shall, within five days following conviction, submit the completed  
2 form described in subparagraph (B) to the arresting law  
3 enforcement agency.

4 (iv) If the defendant owns, possesses, or has within his or her  
5 custody or control any firearms to relinquish, following  
6 relinquishment, but within five days following the conviction, the  
7 designee shall submit the completed form described in  
8 subparagraph (A) to the arresting law enforcement agency.  
9 Pursuant to clause (iv) of subparagraph (B), the defendant shall,  
10 within the five days following conviction, notify both the arresting  
11 law enforcement agency and the Department of Justice regarding  
12 any lost or stolen firearms.

13 (D) The following procedures shall apply to any defendant who  
14 remains in custody following conviction:

15 (i) The designee shall dispose of any firearm the defendant  
16 owns, possesses, or has within his or her custody or control within  
17 14 days of the conviction, by surrendering the firearm to the control  
18 of local law enforcement officials, selling the firearm to a firearms  
19 dealer, or selling or transferring the firearm to a third party by  
20 completing the sale or transfer through a firearms dealer.

21 (ii) During the 14-day period following the conviction, a  
22 defendant who remains in custody shall not be prosecuted under  
23 subdivision (a), (b), or (c) for his or her ownership of a firearm  
24 to be relinquished, provided the firearm was owned by the  
25 defendant prior to conviction. This provision shall not apply to a  
26 defendant who was, prior to conviction, already prohibited from  
27 owning, purchasing, receiving, possessing, or having under his or  
28 her custody or control any firearm by subdivision (a), (b), or (c).

29 (iii) If the defendant does not own, possess, or have within his  
30 or her custody or control any firearms to relinquish, the defendant  
31 shall, within 14 days following conviction, submit the completed  
32 form described in subparagraph (B) to the arresting law  
33 enforcement agency.

34 (iv) If the defendant owns, possesses, or has within his or her  
35 custody or control any firearms to relinquish, the designee shall,  
36 following relinquishment, but within 14 days following conviction,  
37 submit the completed form described in subparagraph (A) to the  
38 arresting law enforcement agency. Pursuant to clause (iv) of  
39 subparagraph (B), the defendant shall, within the 14 days following

1 conviction, notify both the arresting law enforcement agency and  
2 the Department of Justice regarding any lost or stolen firearms.

3 (v) If the defendant is released from custody during the 14 days  
4 following conviction and a designee has not yet taken temporary  
5 possession of any firearm to be relinquished as described above,  
6 the defendant shall, within five days following his or her release,  
7 relinquish any firearm in the manner described in subparagraph  
8 (C).

9 (E) Pursuant to Section 1324, no information directly or  
10 indirectly derived from the form described in subparagraph (B)  
11 or from a relinquished firearm shall be used in a criminal  
12 prosecution for illegal possession of that firearm prior to  
13 relinquishment. This protection shall not extend to any prosecution  
14 for the unlawful use of any firearm.

15 (F) Failure by a defendant or a designee, except a designee that  
16 is a consenting law enforcement agency, to timely file the  
17 completed form described in subparagraph (A) with the arresting  
18 law enforcement agency shall constitute an infraction punishable  
19 by a fine not exceeding five hundred dollars (\$500).

20 (G) Local law enforcement agencies are urged to obtain a  
21 secured mailbox from the Department of Justice in order to receive  
22 updated information from the Prohibited Armed Persons File, as  
23 described in Sections 12010 to 12012, inclusive. Local law  
24 enforcement is further encouraged to review this information  
25 against the declarations in the submitted forms described in  
26 subparagraph (A) and to retrieve illegally possessed firearms  
27 whenever possible.

28 (H) A law enforcement agency shall not be required to retain  
29 a firearm that was relinquished to the law enforcement agency  
30 pursuant this subdivision for more than 30 days after the date on  
31 which the firearm was relinquished. After the 30-day period has  
32 expired, the law enforcement agency shall destroy the firearm,  
33 unless the firearm is retained for official purposes pursuant to  
34 Section 12030.

35 (e) Any person who (1) is alleged to have committed an offense  
36 listed in subdivision (b) of Section 707 of the Welfare and  
37 Institutions Code, an offense described in subdivision (b) of Section  
38 1203.073, any offense enumerated in paragraph (1) of subdivision  
39 (c), or any offense described in subdivision (a) of Section 12025,  
40 subdivision (a) of Section 12031, or subdivision (a) of Section

1 12034, and (2) is subsequently adjudged a ward of the juvenile  
2 court within the meaning of Section 602 of the Welfare and  
3 Institutions Code because the person committed an offense listed  
4 in subdivision (b) of Section 707 of the Welfare and Institutions  
5 Code, an offense described in subdivision (b) of Section 1203.073,  
6 any offense enumerated in paragraph (1) of subdivision (c), or any  
7 offense described in subdivision (a) of Section 12025, subdivision  
8 (a) of Section 12031, or subdivision (a) of Section 12034, shall  
9 not own, or have in his or her possession or under his or her  
10 custody or control, any firearm until the age of 30 years. A  
11 violation of this subdivision shall be punishable by imprisonment  
12 in a county jail not exceeding one year or in the state prison, by a  
13 fine not exceeding one thousand dollars (\$1,000), or by both that  
14 imprisonment and fine. The juvenile court, on forms prescribed  
15 by the Department of Justice, shall notify the department of persons  
16 subject to this subdivision. Notwithstanding any other law, the  
17 forms required to be submitted to the department pursuant to this  
18 subdivision may be used to determine eligibility to acquire a  
19 firearm.

20 (f) Subdivision (a) shall not apply to a person who has been  
21 convicted of a felony under the laws of the United States unless  
22 either of the following criteria is satisfied:

23 (1) Conviction of a like offense under California law can only  
24 result in imposition of felony punishment.

25 (2) The defendant was sentenced to a federal correctional facility  
26 for more than 30 days, or received a fine of more than one thousand  
27 dollars (\$1,000), or received both punishments.

28 (g) (1) Every person who purchases or receives, or attempts to  
29 purchase or receive, a firearm knowing that he or she is prohibited  
30 from doing so by a temporary restraining order or injunction issued  
31 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure,  
32 a protective order as defined in Section 6218 of the Family Code,  
33 a protective order issued pursuant to Section 136.2 or 646.91 of  
34 this code, or a protective order issued pursuant to Section 15657.03  
35 of the Welfare and Institutions Code, is guilty of a public offense,  
36 which shall be punishable by imprisonment in a county jail not  
37 exceeding one year or in the state prison, by a fine not exceeding  
38 one thousand dollars (\$1,000), or by both that imprisonment and  
39 fine.

1 (2) Every person who owns or possesses a firearm knowing that  
2 he or she is prohibited from doing so by a temporary restraining  
3 order or injunction issued pursuant to Section 527.6 or 527.8 of  
4 the Code of Civil Procedure, a protective order as defined in  
5 Section 6218 of the Family Code, a protective order issued pursuant  
6 to Section 136.2 or 646.91 of this code, or a protective order issued  
7 pursuant to Section 15657.03 of the Welfare and Institutions Code,  
8 is guilty of a public offense, which shall be punishable by  
9 imprisonment in a county jail not exceeding one year, by a fine  
10 not exceeding one thousand dollars (\$1,000), or by both that  
11 imprisonment and fine.

12 (3) The Judicial Council shall provide notice on all protective  
13 orders that the respondent is prohibited from owning, possessing,  
14 purchasing, receiving, or attempting to purchase or receive a  
15 firearm while the protective order is in effect. The order shall also  
16 state that the firearm shall be relinquished to the local law  
17 enforcement agency for that jurisdiction or sold to a licensed gun  
18 dealer, and that proof of surrender or sale shall be filed within a  
19 specified time of receipt of the order. The order shall state the  
20 penalties for a violation of the prohibition. The order shall also  
21 state on its face the expiration date for relinquishment.

22 (4) If probation is granted upon conviction of a violation of this  
23 subdivision, the court shall impose probation consistent with  
24 Section 1203.097.

25 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is  
26 justifiable where all of the following conditions are met:

27 (A) The person found the firearm or took the firearm from a  
28 person who was committing a crime against him or her.

29 (B) The person possessed the firearm no longer than was  
30 necessary to deliver or transport the firearm to a law enforcement  
31 agency for that agency's disposition according to law.

32 (C) If the firearm was transported to a law enforcement agency,  
33 it was transported in accordance with paragraph (18) of subdivision  
34 (a) of Section 12026.2.

35 (D) If the firearm is being transported to a law enforcement  
36 agency, the person transporting the firearm has given prior notice  
37 to the law enforcement agency that he or she is transporting the  
38 firearm to the law enforcement agency for disposition according  
39 to law.

1 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or  
2 (e), the trier of fact shall determine whether the defendant was  
3 acting within the provisions of the exemption created by this  
4 subdivision.

5 (3) The defendant has the burden of proving by a preponderance  
6 of the evidence that he or she comes within the provisions of the  
7 exemption created by this subdivision.

8 (i) Subject to available funding, the Attorney General, working  
9 with the Judicial Council, the California Alliance Against Domestic  
10 Violence, prosecutors, and law enforcement, probation, and parole  
11 officers, shall develop a protocol for the implementation of the  
12 provisions of this section. The protocol shall be designed to  
13 facilitate the enforcement of restrictions on firearm ownership,  
14 including provisions for giving notice to defendants who are  
15 restricted, provisions for informing those defendants of the  
16 procedures by which defendants shall dispose of firearms when  
17 required to do so, provisions explaining how defendants shall  
18 provide proof of the lawful disposition of firearms, and provisions  
19 explaining how defendants may obtain possession of seized  
20 firearms when legally permitted to do so pursuant to this section  
21 or any other provision of law. The protocol shall be completed on  
22 or before January 1, 2005.

23 SEC. 2. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution for certain  
25 costs that may be incurred by a local agency or school district  
26 because, in that regard, this act creates a new crime or infraction,  
27 eliminates a crime or infraction, or changes the penalty for a crime  
28 or infraction, within the meaning of Section 17556 of the  
29 Government Code, or changes the definition of a crime within the  
30 meaning of Section 6 of Article XIII B of the California  
31 Constitution.

32 However, if the Commission on State Mandates determines that  
33 this act contains other costs mandated by the state, reimbursement  
34 to local agencies and school districts for those costs shall be made  
35 pursuant to Part 7 (commencing with Section 17500) of Division  
36 4 of Title 2 of the Government Code.